In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1962

No. 34

BROTHERHOOD OF RAILROAD TRAINMEN,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA, ex rel Virginia State Bar,
Defendant.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA AND APPENDIX

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SUBJECT INDEX

TABLE OF CASES CITED

OTHER AUTHORITIES

STATUTES

APPENDIX INDEX

(SUBJECT INDEX)

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To The Honorable Chief Justice And Associate Justices Of The Supreme Court Of The United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia, entered in this cause on 31st day of August, 1962. (see appendix p. 1)

No opinion was rendered by either the Supreme Court of Appeals of the Commonwealth of Virginia, or the Chancery Court of the City of Richmond, Virginia, other than the findings of fact by the Chancery Court of the City of Richmond, Virginia, incorporated in its decree of January 29, 1962. (see appendix p. 1-6)

JURISDICTION

The judgment of the Chancery Court of the City of Richmond, Virginia, was entered on January 29, 1962. On June 12, 1962, the Supreme Court of Appeals of the Commonwealth of Virginia rendered a decision denying the petitioner an appeal. The petitioner filed its petition for rehearing which was denied on the 31st day of August, 1962. (see appendix p. 6-7)

The jurisdiction of this Court is evoked under 28 U.S.C.A. § 1257(3).

CONSTITUTIONAL PROVISIONS WITH FEDERAL AND STATE STATUTES INVOLVED, ALONG WITH RULES FOR INTEGRATING OF THE VIRGINIA STATE BAR, ADOPTED AND PROMULGATED BY THE SUPREME COURT OF APPEALS OF VIRGINIA, DEFINING THE PRACTICE OF LAW.

The constitutional provisions involved are those of the First and Fourteenth Amendments to the Constitution of the United States. (see appendix, p. 7)

The Federal Statute involved is the Federal Railway Labor Act (45 U.S.C.A. §§151-164) and the State Statutes

involved are §§54.48—54.51 and §54-83.1 of the Code of Virginia, 1950, as amended, with rules for integration of the State Bar, with amendments, January 11, 1960, Defining the Practice of Law. 201 Va. 1XXXV. (see appendix, p. 8-15)

STATEMENT OF CASE

The Virginia State Bar filed its bill of complaint in the Chancery Court of the City of Richmond, Virginia, on June 29, 1959, against the Brotherhood of Railroad Trainmen, Bernard M. Savage, Attorney at Law, Baltimore, Maryland; who was not authorized to practice law in the Commonwealth of Virginia, and Norris W. Tingle, Baltimore, Maryland, Investigator for the Brotherhood of Railroad Trainmen, and alleged, among other things, the following:

> "5. The Brotherhood maintains what it calls a 'Legal Aid Department' which, while collecting information that is valuable to those who are interested in the welfare of railroad employees, also solicits business through the means of certain of its employees and members of its lodges for various attorneys at law throughout the United States which have been selected by the Legal Aid Department and designated by said department as Regional or Legal Counsel.
>
> "6. The solicitation of business for Regional or Legal Counsel has been conducted in the following manner: when a lodge member is injured or killed in the course of his employment, he or his family or estate notifies his lodge and his lodge, acting through its secretary

or some other member, notifies the Legal Aid Department of the injury or death; the Legal Aid Department immediately notifies Regional or Legal Counsel of the injury or death; Regional or Legal Counsel, in turn, sends the Regional investigator, a person who is employed and paid by both Regional or Legal Counsel and by the Brotherhood, to investigate the happening; in many cases both the lodge to which the injured man belongs or to which the deceased belonged, acting through its officers and members and the Regional Investigator, advise the injured person or his family, or the family or estate of the deceased, that the claim against the injured or deceased member's employer should not be settled without consulting Regional or Legal Counsel; and the Regional Investigator then arranges for the injured party or family of the deceased to execute the necessary agreements retaining the services of Regional or Legal Counsel on forms which he carries with him.

"7. Regional and Legal Counsel handle any and all such matters on a contingent fee basis that is fixed and set by the Brotherhood through its Legal Aid Department, and, together with other Regional or Legal Counsel, he supports the Legal Aid Department by paying annually to the Legal Aid Department a sum assessed by said department, the amount of which is determined by the department by the use of a formula that takes into account the volume of fees collected by Regional or Legal Counsel from members of the Brotherhood, their families or estates. Regional or Legal Counsel further makes advances for the support and maintenance of injured Brotherhood members or the families of deceased members pending settlement of claims that he agrees to handle for them.

"8. The Brotherhood, Savage as Regional and Legal Counsel for an area which includes the entire Commonwealth of Virginia, and Tingle as Regional Investigator for the Commonwealth of Virginia have engaged in the practices hereinabove referred to and the complainant is advised are engaging in such practices in the Commonwealth of Virginia and in the City of Richmond.

"9. Your complainant charges that the practices hereinabove described constitute the unauthorized practice of law in the Commonwealth of Virginia by each of the defendants, the Brotherhood, Savage and Tingle." (see appendix, p. 16, 20)

The Brotherhood admitted in its answer that prior to April 1, 1959, Legal Counsel handled cases for injured members and estates of deceased members on a contingent fee basis, and further that Legal Counsel made contributions to the Department of Legal Counsel.

Mr. W. P. Kennedy, President of the Brotherhood, testified that after April 1, 1959, it eliminated the objectionable practices as alleged by the Virginia State Bar, because the Supreme Court of Illinois had determined the practices objectionable in a suit for declaratory judgment brought by the Brotherhood. (Kennedy dep. R-29, 34, 35, 36, 37, 38, 39) Mr. Kennedy further testified that the Brotherhood had a right to operate in Virginia along the lines suggested in the Illinois case. (Kennedy dep. R-151) Mr. Kennedy also testified specifically that after April 1, 1959, the Brotherhood paid all of the costs of operating the Department of Legal Counsel in other states, and had no agreement with Legal Counsel providing for the amount

of fee to be charged its members, and testified that the Brotherhood was strictly complying in other states with the decision: IN RE: Brotherhood of Railroad Trainmen, 13 Ill (2d) 391. (see appendix, p. 20, 26)

Mr. W. P. Kennedy further testified that the Brotherhood no longer employed Regional Investigators in the United States, and neither had Regional Investigators, nor Legal Counsel, in the State of Virginia. (Kennedy dep. R-54)

The State Bar did not introduce any evidence to show the plan of operation by the Brotherhood in Virginia, prior or subsequent to the date of its suit. The Bar relied on records and decrees of various suits brought against Legal Counsel and the Brotherhood prior to April 1, 1959, in other states. In addition, the Bar took the depositions of witnesses of incidents arising in the States of Califorina, Ohio, Illinois and others, and took testimony in open court of witnesses brought to Virginia from Nebraska and Georgia, as to what took place in those states prior to the institution of this suit.

In its amended answer, filed April 10, 1961, to the Bar's bill of complaint, and its motion to strike the evidence of the Bar, the Brotherhood alleged that the practices in which it was engaged in Virginia did not constitute the practice of law, and further it had a legal right to make available to its members or their families any information gathered as a result of its investigations, and in addition, it had the right to inform members to consult or employ attorneys for the purpose of protecting their legal rights, and that these rights were protected by the First and Fourteenth Amendments to the Federal Constitutions. (see appendix, p. 26, 28 for amended answer and motion)

The motion to strike was overruled by order entered on January 23, 1962, and the final decree ignored the Federal Question raised by the answer and motion. (see appendix, p. 30) The same Federal questions were also raised by Assignment of Error in the Supreme Court of Appeals of Virginia. The Brotherhood also assigned as error the entry of the decree of January 29, 1962, which denied the Brotherhood the right to make certain recommendations to its members, the right being given it by virtue of the Federal Railway Act. (45 U.S.C.A. §§ 151-164)

Process was never served on Bernard W. Savage and Norris W. Tingle; therefore, the suit of the Virginia State Bar abated as to them.

THE QUESTIONS PRESENTED FOR REVIEW

(1) Whether the Brotherhood of Railroad Trainmen and its members have the right to make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making settlement of their claims, and second, the names of attorneys, who, in its and their opinion, have the capacity to handle such claims successfully, and whether this right is protected by the First and Fourteenth Amendments to the Constitution of the United States?

(2) Whether the Federal Railway Act, which authorizes the Brotherhood to represent its members generally and specifically to handle their "grievances", creates such an interest in the Brotherhood, that it has the right to make known to its members the advisability of obtaining legal advice and to make known the names of competent

counsel in connection with rights of members under the Federal Employers' Liability Act, not withstanding any rule or doctrine of State law?

STATUTES INVOLVED:

The pertinent statutes and constitutional provisions are printed in the appendix, infra, pp. 35, 39 and 42.

SPECIFICATION OF ERRORS TO BE HEARD

The Supreme Court of Appeals of Virginia erred:

(1) In refusing to grant an appeal to the Brotherhood of Railroad Trainmen, and in refusing to hold that the Brotherhood of Railroad Trainmen, and its members have a right to make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making settlement of their claims, and second, the names of attorneys who, in its and their opinion have the capacity to handle such claims successfully, and that this right was protected by the First and Fourteenth Amendments to the Constitution of the United States against infringement by any State.

(2) In refusing the Brotherhood an appeal from the Chancery Court of the City of Richmond, Virginia, and refusing to hold that the Federal Railway Act, which authorizes the Brotherhood to represent its members generally and specifically to handle their "grievances", creates such an interest in the Brotherhood, that it has the right to make known to its members the advisability of obtaining legal advice

and to make known the names of competent counsel in connection with rights of members under the Federal Employers' Liability Act, not withstanding any rule or doctrine of State law?

REASONS FOR GRANTING THE WRIT

The important question presented by this case is the Constitutional protection of the right of freedom of speech. The basic issue is whether the Brotherhood of Railroad Trainmen and its members, have the right to tell members who have been injured, and survivors of deceased members, to obtain legal advice before making settlement of their claims with their railroad employers, and further make known names of attorneys who have the capacity to handle successfully cases under the Federal Employers' Liability Act and Federal Safety Appliance Act.

The Chancery Court of the City of Richmond, Virginia, enjoined the Brotherhood, its officers, agents, servants, employees and its members:

> "from holding out lawyers selected by it as the only approved lawyers to aid the members or their families; from informing any lawyer that an accident has occurred and furnishing the name and address of an injured or deceased member for the purpose of obtaining legal employment for such lawyer, or *in any other manner soliciting or encouraging such legal employment of the selected lawyers;* from stating or suggesting that such selected lawyers will defray expenses and make advances to clients pending settlement of claims; * * *; and from formulating and

putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers; * *." (Emphasis supplied)

W. P. Kennedy, President of the Brotherhood, testified in part as follows: (R-35, 36, 37 and 38)

"Q. Yes. Well, now, I interrupted you when I asked you to tell me how they differ.

"A. All right. One. The BRT may maintain a staff to investigate injuries to its members. We maintain that staff. That staff is maintained in Cleveland, Ohio.

"The BRT may so conduct investigations that results are of maximum value to members in prosecuting their claims.

"The BRT may make reports of investigations available to the injured man or his survivors. In other words, if I send a man out from my office to make an investigation of a serious accident, there is nothing to stop me from sending a copy of that report to the injured man or his survivors.

"4. Investigations to be financed by the BRT. In other words, the investigations will be financed by the Brotherhood of Railroad Trainmen as a labor organization, which we are doing now.

"5. The B. of R. T. may make known to the injured members and their survivors, first, the advisability of obtaining legal advice before making a settlement; and, second, the names of attorneys who have the capacity to handle such complaints successfully.

"Now, here is what we understand the B. of R. T. may not do.

"1. The BRT employees may not carry contracts for employment of any attorney. And I have prohibited any individual of this Brotherhood from carrying a contract for any attorney.

"2. May not carry photostats of any settlement checks. And I prohibited them from carrying any kind of a photograph of any settlement previously made.

"3. No financial connection of any kind between the BRT and any lawyer is permissible. No connections whatsoever. There isn't an attorney representing our Brotherhood in the former Legal Aid Department or in the present Counsel that has any financial connection with the organization.

"4. No lawyer can properly pay any amount whatsoever to the BRT or any of its departments, officers, or members as compensation, reimbursement of expenses, or gratuity in connection with the procurement of any case.

"5. The BRT cannot fix the fees to be charged for the services to any of it members.

* * *

"Q. Well, now, Mr. Kennedy, you agree, then, that if any member of the Brotherhood or any of the investigators sent out by you go any point further than merely suggesting the name of a lawyer, then he is in violation of the Illinois decree?

"A. He would have that right under this to suggest—

"Q. That isn't answering my question, sir, I don't believe that answers my question.

"A. He would have the right to name the attorney who would have the capacity, in his opinion, to handle the claim successfully in any particular State.

"Q. And that's as far as he could go under that letter?
"A. That is right.

"Q. Now, if he undertakes to take that man to the attorney, he would be doing wrong, wouldn't he?
"A. That is right. He would have no right to take him to the attorney.

"Q. And he would have no right to try to persuade him to go to that particular attorney?
"A. No, he could just mention the attorney's name."

The sole objective of the Brotherhood of Railroad Trainmen, its officers, agents, servants, employees, and its members was to communicate to its injured members, and survivors of deceased members, the advisability of obtaining legal advice before making settlement of their claims, and the names of attorneys, who have the capacity to handle such claims successfully.

The Brotherhood neither has Regional Investigators nor Legal Counsel designated in the Commonwealth of Virginia, excepting its present counsel, who represents the Brotherhood in this case only. (Kennedy dep. R-56)

W. P. Kennedy further testified in part as follows: (R-151)

BY MR. BEECHER E. STALLARD:

"Q. Do you take the position that the Brotherhood

of Railroad Trainmen has the right to make known to its members attorneys and information which they may have gathered in the investigation of accidents and death?
"A. Yes, we have that right.

"Q. You take the position, then, that you have the right to advise your injured members, and also the families of those who have been killed, of attorneys whom you consider proper?
"A. That is correct."

President Kennedy testified that in his opinion no member should do more than suggest the name of an attorney be employed. The members were at liberty to employ an attorney of their own choosing.

President Kennedy further testified that if he thought the Illinois decision would be acceptable to the Commonwealth of Virginia, then the Brotherhood would make the decision effective in Virginia. His testimony in part reads:

"* * * when this action came against us in the State of Virginia, we simply said, we won't apply any kind of a proposition in the State of Virginia until we know definitely what they want, even the Illinois decision, that may not be acceptable to Virginia. We don't know. *If we thought for a moment it would be, we would make it effective tomorrow.*" (Emphasis supplied)

In Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 69 L.ed. 430, this Court said:

"The case confronts us again with the duty our system places on this court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensible democratic freedom secured by the First Amendment." cf. Schneider v. State of N.J., 308 U,S. 147, 60 S.Ct. 146, 84 L.ed. 155; Catwell v. Connecticut, 310, U.S. 296, 60 S.Ct. 900, 44 L.ed. 1213, 128 ALR 1352; Prince v. Mass., 321 U.S. 158, 64 S.Ct. 438.

"That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice." Compare U.S. v. Carolina Products Co., 304 U.S. 144, 152, 153, 58 S.Ct. 778, 783, 784, 82 L.ed. 1234.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully, or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other context might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuse endangering paramount interest, give occasion for permissible limitation. It is, therefore, in our tradition to allow the widest room for discussion, the narrowest range for its restriction,

particularly when this right is exercised in conjunction with peaceful assembly. It is not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peacefully to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. DeJonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 259, 81 L.ed. 278, and therefore, are united in the First Article's assurance. Cf. 1 Annals of Congress, 759-760.

"This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment is freedom of mind, the same security as freedom of conscience. Cf. Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.ed. 1070, 39 ALR 468; Meyer v. Neb., 262 U.S. 390, 43 S.Ct. 625, 67 L.ed. 1042, 29 ALR 1446; Prince v. Mass., 321 U.S. 158, 64 S.Ct. 438, Great secular cases, with small ones, are guaranteed. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones, and the rights of free speech and of free press are not confined to any field of human interest."

In the case of *Thomas* v. *Collins, supra,* the court issued an injunction anticipating that Thomas was going to make a speech in Texas. In the instant case, the record unequivocally discloses that the Brotherhood of Railroad Trainmen, and its members, were not telling its injured members, and the survivors of deceased members to consult with lawyers about their cases in the State of Virginia, although the Brotherhood and its members desired to

operate in Virginia under the Illinois case, which gave them this right. Since the Brotherhood was not operating in Virginia at the time of the institution of this suit, the Chancery Court of the City of Richmond, Virginia, incorporated in its decree the following language:

> "and the court finds that there is reasonable grounds for apprehension that this plan and course of conduct will, in furtherance of Defendant Brotherhood's avowed purpose, be adopted and put into effect in the City of Richmond, within the jurisdiction of this court."

The petitioner concedes that a state has the power to declare, what the public policy is concerning the practice of law as defined by statute and determine that certain practices violate such policy and is thus enjoinable. However, in the instant case, both the Chancery Court of the City of Richmond, Virginia, and the Supreme Court of Appeals of Virginia, erred in applying the public policy of that State. The policy was declared by the Supreme Court of Appeals of Virginia, in the case of NAACP v. Harrison, 202 Va. 142, which is now before this Court on writ of certiorari. The Virginia Court of Appeals stated, after reviewing the pertinent decisions of this Court, that:

> "A state may forbid one to practice law without a license, but it cannot prevent an unlicensed person from making a speech before an assembly, telling them their rights and urging them to assert same. (See Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.ed. 430)"

Thus, the public policy of the State of Virginia recognizes that it cannot prevent an unlicensed person from

telling others of their rights, and urging them to assert same.

The decision cited as applied to the facts of the instant case was brought to the attention of both Virginia courts, but rejected by them. The courts thus committed palatable error, which this court is respectfully requested to correct.

Thus, on the facts there has not been a violation of the statutes defining and regulating the practice of law in Virginia. The Virginia courts in so holding acted in obvious disregard of the facts with an arbitrariness this Court should not condone. (Ward & Goe v. Krensky, 259 U.S. 503, 42 S.Ct. 529, 66 L.ed. 1033; Corn Prod. Ref. Co. v. Eddie, 249 U.S. 427, 39 S.Ct. 325, 63 L.ed. 689). The enjoining of the right of communication in the instant case deprived petitioner of rights protected by the First and Fourteenth Amendments to the Federal Constitution. This protection the petitioner has claimed from the outset.

The issue involved is one of paramount importance to the Brotherhood of Railroad Trainmen and to its members and to other union members. If the peaceful communication employed by the petitioner for the sole purpose of telling its injured members to consult with attorneys before settling their cases, and to employ an attorney if necessary, who has been successful in handling cases under the Federal Employers' Liability Act and Safety Appliance Act, is not protected by the Federal Constitution, then peaceful communication is per se illegal. This is the effect of the Virginia Courts' decisions. This Court has not so held. On the contrary, this Court has steadfastly recognized peaceful communication as being protected by the Federal Constitution.

2. Whether the Federal Railway Act, which authorizes the Brotherhood to represent its members generally and specifically to handle their "grievances", creates such an interest in the Brotherhood, that it has the right to make known to its members the advisibility of obtaining legal advice and to make known the names of competent counsel in connection with rights of members under the Federal Employers' Liability Act, not withstanding any rule or doctrine of State law?

THE RAILWAY LABOR ACT GRANTS PETITIONER RIGHTS IN THE PREMISES WHICH CANNOT BE ABROGATED BY ANY CONSTRUCTION OF THE LAW OF VIRGINIA

The Brotherhood has an interest in the welfare of its injured members, this interest being inherent in the very nature of its labor organization which was originally formed to protect railroad employees and their widows from the disastrous consequences of railroad injuries and deaths. In that era, the average life expectancy of a switchman in 1893 was seven years. Griffith, *The Vindication of a National Public Policy under The Federal Employers' Liability Act*, 18 Law & Contemporary Problems, 160 at 963. The early organization was fraternal and for the purpose of providing insurance benefits to members totally disabled, or to the next of kin of members killed in railroad services.

Twenty-two years after the FELA was validly enacted in 1908, the Brotherhood established its Legal Aid Department. The purpose was to give aid and protection to its members once more; this time so that these members could exercise their legal rights despite the railroad claim agent's deceit and despite the fraud of some lawyers who

represented employees. The worthiness of that objective has never been criticized because it has designated particular lawyers. The Brotherhood has modified the Plan to meet objections. The modifications have never been enough because the objectors have refused to recognize the Brotherhood's interest in its members.

The Supreme Court of Illinois did recognize the interest of the Brotherhood based on policy considerations founded on the hazardous nature of railroad employment and on the persistence of undesirable practices on the part of railroad claim agents. That Court, however, denied the Trainmen's contention here made which is based on the Railway Labor Act (45 U.S.C.A. §§151, et seq.)

As that court states, the Brotherhood is authorized to to represent its members before the National Railroad Adjustment Board or other appropriate tribunals in the processing of disputes growing out of grievances. But, the Court was *clearly in error* when it stated that these injury and death claims were not the kind of injury and death claims that the statute contemplates. Grievance is a broad term and includes some of these claims in the opinion of this Court. Mr. Justice Rutledge in E. J. & E. v. Burley, 325 U.S. 711, 65 S.Ct. 1282, provided, and established the basis for the distinction between "major" and "minor" disputes under the Railway Labor Act. Briefly, major disputes are matters to be resolved by collective bargaining while minor disputes must go to the National Railroad Adjustment Board. Speaking of the minor disputes as the second of two classes, Mr. Justice Rutledge states at 325 U.S. 723, 65 S.Ct. 1290:

"The second class, however, contemplates the ex-

istence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case.

"In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, *e.g., claims on account of personal injuries.* In either case the claim is to rights accrued, not merely to have new ones created for the future." (Emphasis supplied)

The Brotherhood is entitled to organize for the mutual aid and protection of its members by virtue of the Railway Labor Act. Moreover, that Act is in pari materia with the National Labor Relations Act. *Order of Railroad Telegraphers* v. *Ry. Exp. Agency,* 321 U.S. 342, 346, 64 S.Ct., 582, 585. The full ambit of the rights of association for mutual aid and protection, an approach to which has never been asserted by the Brotherhood, is stated in *Salt River Valley Water User's Association* v. *NLRB,* 9th Cir., 206 F (2d) 325, which involved the rights of zanjeros. A zanjero is responsible for the delivery of water and is required to be on duty for twenty-four hours a day, seven days a week. In deciding the case, the Circuit Court states at pages 328-329:

The peculiar nature of the zanjeros' duties and working hours has resulted in considerable dispute as to their wages and the adequacy thereof under the minimum wage provisions of the Fair Labor Stand-

ards Act of 1938, 29 U.S.C. A. ° 201 et seq. This matter had been discussed at meetings of the union to which the zanjeros belonged, but some of the zanjeros were dissatisfied with the progress the union had made. Therefore, in October of 1950, a group of zanjeros attended a meeting at which Sturdivant was selected to circulate a petition conferring upon him power of attorney to recover for the zanjeros by court action or negotiation their individual claims for backpay and overtime wages allegedly due from the Association under the provisions of the Fair Labor Standards Act. In less than two weeks Sturdivant obtained the signatures of 30 or 35 zanjeros on his petition.

"The Association discharged him on November 7, his discharge slip stating merely that he was 'an unsatisfactory employee.'

"The Board asserts that circulation by Sturdivant of the petition authorizing him to take action on behalf of the zanjeros in regard to their grievances constituted 'concerted activities for the purpose of * * mutual aid or protection' within the meaning of §7 of the Act, 29 U.S.C.A., §157. We agree with this contention. The act provides that 'any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative * * §9(a) of the Act, 29 U.S.C.A. §159(a). Concerted activity may take place where one person is seeking to induce action from a group. N.L.R.B. v. Schwartz, 5 Cir., 1945, 146 F (2d) 773. Further, 'concerted activities for the purpose of * * mutual

aid or protection' are not limited to union activities. Modern Motors, Inc., v. NLRB., 8 Cir., 1952, 198 F (2d) 925; NLRB v. J. I. Case Co., 8 Cir., 1952, 198 F (2d) 919; NLRB v. Phoenix Mut. Life Ins. Co., 7 Cir., 1948, 167 F (2d) 983, 6 ALR (2d) 408, certiorari denied 335 U.S. 845, 69 S.Ct. 68, 93 L.ed. 395. By soliciting signatures to the petition, Sturdivant was seeking to obtain such solidarity among the zanjeros as would enable the exertion of group pressure upon the Association in regard to possible negotiation and settlement of the zanjeros' claims. If suit were filed, such solidarity might enable more effective financing of the expenses involved. Thus, in a real sense, circulation of the petition was for the purpose of 'mutual aid or protection'. The Association argues that any legal rights to backpay on the part of the zanjeros were individual rights and that therefore there could be no 'mutual' aid or protection. But the Association ignores the fact that 'concerted activity for the purpose of * * mutual aid or protection' is often an effective weapon for obtaining that to which the participants, as individuals, are already 'legally' entitled."

Considering the broad range of "concerted activities" permitted this union by the Federal Labor Acts, it is astounding that the Bar can contend that the recommendation of a lawyer by one member of the union to an injured member constitutes "ambulance chasing". The interests of the union and its members are not distinct and separable. The union must, as a practical matter, be capable of acting in the interests of individual members if it is to serve its statutory functions. As Mr. Justice Frankfurter has stated in *Assoc. of Westinghouse Salaried Employees* v. *Westing-*

house Electric Corp., 348 U.S. 437, 457, 808 S.Ct. 480, 499:

> "As a practical matter, the employees expect their union not just to secure a collective agreement, but more particularly to procure for the individual employees the benefits promised. If the union can *secure* only the promise *and is impotent to procure for the employee the benefits promised*, then it is bound to lose their support." (Emphasis supplied)

More than at any other time, the injured employee reasonably expects his union to stand by him and especially to protect his right to employment when he has recovered. The injured employee should not be compelled to choose between his job and his rights under the FELA. This choice, however, has been and continues to be the railroad's objective. The injury itself under railroad rules in the past terminated the contract of employment. (See Culver v. Kurn, 154 Mo. 1158, 193 S.W. (2d) 602, 1946) Later, the railroads relied on principles of "promissory estoppel" said to be involved in any settlement or judgment where the employee had claimed serious injury. (See Award 17454, Volume 125, Awards of First Division, NRAB, 1956) Lately, the railroads have been relying on "misrepresentation" in the application of employment as grounds for discharging employees who retain attorneys. (See Award 19557, Volume 144, Awards of First Division, NRAB, 1960) where the claim of employee for reinstatement was denied, the referee stating at p. 578:

> "The pertinency and materiality of the misrepresentation is a particularly significant feature of the instant

case. Claimant not only failed to reveal that he has had three anterior shoulder separations (dislocations) of the same shoulder, but by not revealing his former employment with Barrett, frustrated ready revelation of these injuries. While in carrier's employment, he has suffered two more identical injuries to the same shoulder, both arising under quite ordinary working situations. Although it is a condition which is not apparent upon ordinary physical examination, it is something which may recur almost any time.

"Having lost the employee's services for a considerable time already in each of two instances of injuries on the job, and paid claims respectively of $644.50 and $2,250., not only is the carrier naturally apprehensive of the high probability of further such occurrences, but also there are involved paramount considerations of safety to the public and other employees, and indeed to claimant himself, arising from the immobilizing and excruciatingly painful dislocations which could occur at critical moments of great danger. In view of this materiality and the prior grounds mentioned, this claim must be denied."

The Brotherhood, of course, must prosecute these claims for reinstatement even though the employee retained attorneys other than attorneys recommended by the Brotherhood or its members. Recently, the Brotherhood filed a brief *amicus curiae* in this Court in a case of a member of Trainmen who had been discharged by the railroad because of alleged "misrepresentations" in his application of employment. When his case came to trial, the lower court directed a verdict against him because of the "misrepresentations". The Brotherhood urged in its brief that this de-

fense be eliminated and that the Court declare that his rights as an employee be made absolute. The Court eliminated this defense in FELA actions except where the employee applies by using an imposter. *Still* v. *Norfolk & Western R. Co.*, 368 U.S. 35, 82 S.Ct. 148 (1961). This court thereby eliminated the basis in legal theory for the First Division's ignoring of the collective bargaining provisions which customarily make the applicant an employee if not rejected during a period of 30, 60 or 90 days.

The Brotherhood not only has the burden of protecting the injured employee's right to his job, but the interest of the Brotherhood in some cases is more direct and immediate because of the shadowy no man's land of distinctions between Railway Labor Act "grievances" and FELA "personal injuries." See *Butler* v. *Smith*, 104 SE (2d) 848, 869 where the Florida Appellate Court held that the injured employee could not question the propriety or right of the railroad to give him the field test on which he was injured, but held that he had a remedy for such "grievance" under the Railway Labor Act. The petition for certiorari was dismissed by this Court by a vote of 5 Justices against 4, on the ground that the litigation did not turn on the issue of the inter-relationship of the Railway Labor Act and the FELA. The termination of that case, however, does not give support to the Illinois Supreme Court's earlier finding that FELA actions are not like the labor disputes contemplated by the Railway Labor Act. (See Smith v. Butler, 364 U.S. 361, 81 S.Ct. 927, 1961)

Because of the many interests of the Brotherhood in the injured employees and the many ramifications of those

interests, it is respectfully submitted that the Federal law must govern and a State Court is without jurisdiction to enjoin the present plan of attorney recommendation authorized by the decision of the Supreme Court of Illinois.

For the foregoing reasons, it is respectfully requested that this petition for a writ of certiorari be granted.

Respectfully submitted,

BEECHER E. STALLARD
1223-29 Cen. Natl. Bank Bldg.
Richmond, 19 Virginia

JOHN J. NAUGHTON
205 W. Wacker Drive
Chicago, Illinois

EDWARD B. HENSLEE, JR.
205 W. Wacker Drive
Chicago, Illinois

APPENDIX

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 31st day of August, 1962.

Brotherhood of Railroad Trainmen,
Appellant,

against

Commonwealth of Virginia, ex rel. Virginia State Bar,
Appellee.

Upon a Petition to Rehear

On mature consideration of the petition of the appellant to set aside the decree entered herein on the 12th day of June, 1962, and grant a rehearing thereof, the prayer of the said petition is denied.

A copy, Teste:

H. G. TURNER
Clerk

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

THE 29th DAY OF JANUARY, 1962.

COMMONWEALTH OF VIRGINIA, ex rel, Virginia State Bar,
Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, et als,
Defendants.

FINAL DECREE AWARDING INJUNCTION

This cause came on this day to be finally heard upon the papers formerly read, upon the exhibits filed; upon the depositions filed; upon the transcript of the evidence heard orally in open court, authenticated by the judge and now made a part of the record; and was argued by counsel.

Upon consideration whereof the court finds the following facts:

The defendant Brotherhood in 1930 adopted a plan designed to make available to its members, and the families of its deceased members, the professional services of attorneys selected by the Brotherhood to represent them in claims for personal injury or death arising out of railroad service.

In order to implement this plan the Brotherhood estab-

lished at its Grand Lodge a "Legal Aid Department" (renamed on January 1, 1959, "Department of Legal Counsel"), divided the United States into Regions, and entered into agreements with certain attorneys at law selected by the Brotherhood in each Region, called Regional Counsel (on and after January 1, 1959, called Legal Counsel).

(a) The defendant Brotherhood assigned one or more "Regional Investigators" to each such counsel, who were paid by the Brotherhood.

(b) The operation of this plan has from its inception resulted, and still results, in channeling all, or substantially all, claims for personal injury to, or death of, members into the hands of such Regional (or Legal) Counsel.

(c) In furtherance of the plan the defendant Brotherhood has advised, and continues to advise, its members and the families of deceased members with respect to the legal aspects of their claims; (d) has held out, and continues to hold out, Regional (or Legal) Counsel as the only lawyers approved by the Brotherhood to aid its members and their families; (e) has controlled, and continues to control, directly or indirectly, the fees to be charged by such counsel to its members and their families; (f) has furnished to such counsel prompt notice of the injury or death of a member in railroad service for the purpose of aiding such counsel in obtaining legal employment by its members and their families; (g) has solicited, and continues to solicit, the handling of such claims by such counsel; (h) has paid the salaries of the Regional Investigators (whose chief function is to solicit legal employment of such counsel to prosecute such claims); (i) has advised, and continues to advise, members and the families of deceased

members that the Regional (or Legal) Counsel will defray expenses and make advances during the pendency of claims; (j) has accepted, both directly and indirectly, a share of the counsel's fees; (k) and has countenances the sharing of the fees of such counsel by the Regional Investigators and others who procure legal employment for such counsel.

(l) Various courts throughout the several States in which the practices of the defendant Brotherhood have been subjected to inquiry have reached similar findings of facts and have enjoined the continuance of such practices by the defendant Brotherhood and its Regional (Legal) Counsel.

(m) The defendant Brotherhood has made protestations on occasions prior to April 1, 1959, that it would discontinue the objectionable aspects of the plan and has from time to time made protestations that it has done so; yet it is admitted in the Brotherhood's answer that these practices continued up to April 1, 1959.

(n) The court finds that the defendant Brotherhood still adheres to the pattern and design of the plan formulated and implemented in 1930.

(o) And the court finds that there is reasonable ground for apprehension that this plan and course of conduct will, in furtherance of the defendant Brotherhood's avowed purpose, be adopted and put into effect in the City of Richmond, within the jurisdiction of this court.

WHEREFORE, the court doth ADJUDGE, ORDER And DECREE that the Brotherhood of Railroad Trainmen, its officers, agents, servants and employees, and its members acting in its behalf, be, and they are now, en-

joined (a) from in any manner, directly or indirectly, engaging in the practices aforesaid in the Commonwealth of Virginia; and, in particular, (b) from giving or furnishing legal advice to its members or their families; (c) from holding out lawyers selected by it as the only approved lawyers to aid the members or their families; (d) from informing any lawyer that an accident has occurred and furnishing the name and address of an injured or deceased member for the purpose of obtaining legal employment for such lawyer, or in any other manner soliciting or encouraging such legal employment of the selected lawyers; (e) from stating or suggesting that such selected lawyers will defray expenses and make advances to clients pending settlement of claims; (f) from controlling, directly or indirectly, fees charged or to be charged by any lawyer; (g) from making compensation for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise; (h) from in any manner sharing in the legal fees of any lawyers, or countenancing the splitting of such fees with any lawman, or lay agency; and from doing any act or combination of acts, and from formulating and putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers; and, in general, from violating the the laws governing the practice of law in the Commonwealth of Virginia.

It is further ORDERED that the complainant recover of the defendant Brotherhood its costs in this suit as taxed by the clerk.

The complainant being a person from whom, in the opinion of the court, it would be improper to require bond, the court requires no injunction, bond and this injunction is in force immediately.

The Brotherhood of Railroad Trainmen will be put upon notice of the provisions of this decree by acceptance of service of an attested copy by its counsel of record in this suit and in conformity with the request of counsel for the complainant it is further ORDERED that a certified copy of this decree be served on the secretary of each subordinate lodge of the defendant Brotherhood in the Commonwealth of Virginia.

To all of the provisions of this decree the defendant objected and excepted.

The objects for which this suit was instituted having been fully accomplished, it is ORDERED that the cause be stricken from the docket and the papers placed amongst the ended causes, properly indexed, with leave reserved to any party to have the suit reinstated for good cause shown and after such notice as the court may require.

VIRGINIA:

In The Supreme Court Of Appeals Held At The Supreme Court Of Appeals Building In The City Of Richmond, On Tuesday, The 12th Day Of June, 1962.

BROTHERHOOD OF RAILROAD TRAINMEN,
Appellant,

v.

COMMONWEALTH OF VIRGINIA, ex rel Virginia State Bar,
Appellee.

The petition of Brotherhood of Railroad Trainmen for

an appeal and supersedeas from a decree entered by the Chancery Court of the City of Richmond, on the 29th day of January, 1962, in a certain chancery cause then therein depending, wherein Commonwealth of Virginia, ex rel Virginia State Bar, was plaintiff and the petitioner and others were defendants; having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the said decree is plainly right, doth reject said petition and refuse said appeal and supersedeas, the effect of which is to affirm the decree of the said Chancery Court.

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assembly, and to petition the Government for a redress of grievances.

AMENDMENT 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CHAPTER 8—RAILWAY LABOR ACT RAILROADS, EXPRESS AND SLEEPING CAR COMPANIES

§ 151. Definitions; "Railway Labor Act"

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *

§ 152. General Duties

First. Duty of carriers and employees to settle disputes.

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or *otherwise*, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. (Emphasis supplied)

Second. Consideration of disputes by representatives

Third. Designation of representatives

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

First. Filing of award.

Second. Conclusiveness of award; judgment.

Third. Impeachment of award; grounds.

Fourth. Effect of partial invalidity of award.

Fifth. Appeal; record.

Sixth. Finality of decision of circuit court of appeals.

Seventh. Judgment where petitioner's contentions are sustained.

Eighth. Duty of employee to render service without consent; right to quit.

§ 160. Emergency Board.

§ 161. Effect of partial invalidity of chapter

§ 162. Appropriation.

§ 163. Repeal of prior legislation; exception.

§ 164. Repealed.

SECTIONS OF VIRGINIA CODE, 1950, AS AMENDED:

§ 54-48. Rules and regulations defining practice of law and prescribing codes of ethics and disciplinary procedure. —The Supreme Court of Appeals may, from time to time,

prescribe, adopt, promulgate and amend rules and regulations:

(a) Defining the practice of law.

(b) Prescribing a code of ethics governing the professional conduct of attorneys at law and a code of judicial ethics.

(c) Prescribing procedure for disciplining, suspending, and disbarring attorneys at law.

§ 54-49. Organization and government of Virginia State Bar.—The Supreme Court of Appeals may, from time to time, prescribe, adopt, promulgate and amend rules and regulations organizing and governing the association known as the Virginia State Bar, composed of the attorneys at law of this State, to act as an administrative agency of the Court for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the Court under this article to a court of competent jurisdiction for such proceedings as may be necessary, and requiring all persons practicing law in this State to be members thereof in good standing.

§ 54-50. Fees.—The Supreme Court of Appeals may, from time to time, prescribe, adopt, promulgate and amend rules and regulations fixing a schedule of fees to be paid by members of the Virginia State Bar for the purpose of administering this article, and providing for the collection and disbursement of such fees; but the annual fees to be paid by any attorney at law shall not exceed the sum of ten dollars.

§ 54-51. Restrictions as to rules and regulations.—Notwithstanding the foregoing provisions of this article, the Supreme Court of Appeals shall not adopt or promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys at law, which shall be inconsistent with any statute; nor shall it adopt or promulgate any rule or regulation or method of procedure which shall limit or supersede the jurisdiction of the courts to deal with the discipline of attorneys at law as provided by law; nor shall there be any rule or regulation or method of procedure adopted and promulgated which will provide for any additional method for the trial of attorneys in disbarment or suspension proceedings except those now provided for by statute, and in no case shall an attorney be tried for the violation of any rule or regulation adopted under this article except by a court of competent jurisdiction.

§ 54.83.1. Injunction against running, capping, soliciting and maintenance.—The Commonwealth's Attorney, or any person, firm or corporation against whom any claim for damage to property or damages for personal injuries or for death resulting therefrom, is or has been asserted, may maintain a suit in equity against any person who has solicited employment for himself or has induced another to solicit or encourage his employment, or against any person, firm, partnership or association which has acted for another in the capacity of a runner or capper or which has been stirring up litigation in such a way as to constitute maintenance whether such solicitation was successful or not, to enjoin and permanently restrain such person, his agents, representatives and principals from soliciting any such claims against any person, firm or corporation subsequent to the date of the injunction.

PART SIX
INTEGRATION OF THE STATE BAR

I.

DEFINING THE PRACTICE OF LAW

The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any definition of the practice of law must be derived.

The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is none the less practicing law though such person may employ others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

Generally, the relation of attorney and client exists, and one is deemed to be practicing law, whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.

Specifically, the relation of attorney and client exists, and one is deemed to be practicing law, whenever—

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.

(3) One undertakes, with or without compensation, to present the interest of another before any tribunal—judicial, administrative, or executive—otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and *bona fide* employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such presentation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel, Virginia State Bar,
Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN,
c/o V. W. Satterwhite,
Assistant to the President,
904 West 30th Street
Richmond, Virginia

and

BERNARD M. SAVAGE,
3100 Mathieson Building
Baltimore 2, Maryland

and

NORRIS W. TINGLE,
3100 Mathieson Building
Baltimore 2, Maryland
Defendants.

BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

The complainant respectfully represents to the Court:

1. The Complainant, Virginia State Bar, is the administrative agency of the Commonwealth of Virginia, com-

prised of all lawyers duly qualified and licensed to practice law in the Commonwealth, having the duty to investigate and report all violations of statutes, rules and regulations concerning the practice of law therein.

2. The defendant, Brotherhood of Railroad Trainmen (hereinafter sometimes referred to as the Brotherhood), is a trade union, an unincorporated association, with its headquarters located in Cleveland, Ohio. The Brotherhood is composed of lodges located in all of the forty-eight states of the United States, twelve of which have their headquarters in the Commonwealth of Virginia and three of which have their headquarters in Richmond, Virginia. All of the members of said lodges are the employees of some railroad. W. V. Satterwhite, a resident of Richmond, Virginia, is an assistant to the president of the Brotherhood and is an officer of the Brotherhood.

3. The defendant, Bernard M. Savage (hereinafter sometimes referred to as Savage), is an attorney at law and a resident of the State of Maryland. He is not a member of the Virginia State Bar and is not licensed to practice law in the Commonwealth of Virginia. He was formerly designated by the Brotherhood of Railroad Trainmen as its Regional Counsel and, since April of 1959, is now designated as one of its Legal Counsel.

4. The defendant, Norris W. Tingle (hereinafter sometimes referred to as Tingle), is a resident of the State of Maryland and is an employee of both of the other defendants. He is designated by the defendant, Brotherhood of Railroad Trainmen, as its Regional Investigator.

5. The Brotherhood maintains what it calls a "Legal

Aid Department" which, while collecting information that is valuable to those who are interested in the welfare of railroad employees, also solicits business through the means of certain of its employees and members of its lodges for various attorneys at law throughout the United States which have been selected by the Legal Aid Department and designated by said department as Regional or Legal Counsel.

6. The solicitation of business for Regional or Legal Counsel has been conducted in the following manner: when a lodge member is injured or killed in the course of his employment, he or his family or estate notifies his lodge and his lodge, acting through its secretary or some other member, notifies the Legal Aid Department of the injury or death; the Legal Aid Department immediately notifies Regional or Legal Counsel of the injury or death; Regional or Legal Counsel, in turn, sends the Regional Investigator, a person who is employed and paid by both Regional or Legal Counsel and by the Brotherhood, to investigate the happening; in many cases both the lodge to which the injured man belongs or to which the deceased belonged, acting through its officers and members and the Regional Investigator, advise the injured person or his family, or the family or estate of the deceased, that the claim against the injured or deceased member's employer should not be settled without consulting Regional or Legal Counsel; and the Regional Investigator then arranges for the injured party or family of the decreased to execute the necessary agreements retaining the services of Regional or Legal Counsel on forms which he carries with him.

7. Regional and Legal Counsel handle any and all such matters on a contingent fee basis that is fixed and set by

the Brotherhood through its Legal Aid Department and, together with other Regional or Legal Counsel, he supports the Legal Aid Department by paying annually to the Legal Aid Department a sum assessed by said department, the amount of which is determined by the department by the use of a formula that takes into account the volume of fees collected by Regional or Legal Counsel from members of the Brotherhood, their families or estates. Regional or Legal Counsel further makes advances for the support and maintenance of injured Brotherhood members or the families of deceased members pending settlement of claims that he agrees to handle for them.

8. The Brotherhood, Savage as Regional and Legal Counsel for an area which includes the entire Commonwealth of Virginia, and Tingle as Regional Investigator for the Commonwealth of Virginia have engaged in the practices hereinabove referred to and the complainant is advised are engaging in such practices in the Commonwealth of Virginia and in the City of Richmond.

9. Your complainant charges that the practices hereinabove described constitute the unauthorized practice of law in the Commonwealth of Virginia by each of the defendants, the Brotherhood, Savage and Tingle.

WHEREFORE, your complainant prays that the Brotherhood, Savage and Tingle be permanently enjoined and restrained from engaging in or continuing the practices hereinabove described and from practicing law, directly or indirectly, in the Commonwealth of Virginia and from engaging in any activities connected therewith.

COMMONWEALTH OF VIRGINIA
ex rel Virginia State Bar

By: /s/ AUBREY R. BOWLES, JR.
Aubrey R. Bowles, Jr.
901 Mutual Building
Richmond 19, Virginia
Its Counsel

Excerpts from the
Illinois Supreme Court Opinion

Nonrecord No. 751—Agenda 36—November, 1957

In re Brotherhood of Railroad Trainmen

PER CURIAM: A motion was made on behalf of the Brotherhood of Railroad Trainmen for leave to file in this court an original petition for a declaratory judgment. The motion and petition described certain conduct of the Brotherhood and the lawyers who serve as regional counsel for its legal aid department and requested a ruling that the conduct described was neither illegal nor unprofessional. The motion disclosed that disciplinary proceedings were pending against Edward B. Henslee, general counsel for the Brotherhood, and a regional counsel for its legal aid department, and three of his associates, Edward B. Henslee, Jr., Walter N. Murray and Frank H. Monek.

The questions raised by the petition had not heretofore been considered by the court. And because this court both formulates and enforces the standards governing the practice of law (In re Application of Day, 181 Ill. 73,) we were of the opinion that before a ruling of any kind should be made, an investigation in to the practices in question should be conducted. The motion for leave to file was therefore denied, but at the same time the court,

on its own motion, appointed the Honorable Charles H. Thompson, a former justice of this court, as special commissioner, "with power to inquire into and take proof of all relevant factual matters and to report the testimony, together with the applicable principles of law, to the Chief Justice".

Thereafter hearings were conducted by the special commissioner. The Brotherhood of Railroad Trainmen, the Illinois State and Chicago Bar associations, and a group of twenty-seven railroad companies participated in the hearings by their counsel. At the conclusion of the hearings briefs were filed on behalf of these parties and also on behalf of the American Bar Association. The special commissioner's report and the briefs are now before the court.

There is no serious dispute as to the basic facts. In 1930 the Brotherhood established its "Legal Aid Department". It took this step because it felt that under pressure from railroad claim agents, the claims of its members resulting from injuries they suffered in their work were being settled for unfair amounts. Some of the railroads forced settlements by the threat of loss of employment. At the same time, the members were being solicited by lawyers of varying degrees of competence who sought to, and did, handle the claims of members for contingent fees that sometimes ran as high as fifty per cent of the amount recovered.

As it presently operates, the legal aid department of the Brotherhood maintains a central office in Cleveland, Ohio, at the national headquarters of the Brotherhood. In that office it has a staff consisting of a chief clerk, a

research analyst, three stenographers and a file clerk. It also has a number of regional investigators. The Cleveland office serves as a clearing house which receives reports from all Brotherhood Lodges of instances in which members have been injured or killed in railroad accidents. It notifies the appropriate regional investigator and regional counsel of all accidents.

Operating in conjunction with the legal aid department are sixteen lawyers, each designated by the Brotherhood as a regional counsel for the legal aid department. The regions tend to follow railroad system lines, rather than geographical lines. For example, Edward B. Henslee, the regional counsel with offices in Chicago, is assigned a region that includes all members employed by railroads in Ohio, and the members employed by certain railroads in Pennsylvania, Michigan, Indiana and Illinois. The dominant considerations in the seleetion of regional counsel are the Brotherhood's confidence in the ability of the attorney, plus the prospect of high jury verdicts in the city where his office is located.

*** The Brotherhood Constitution requires that each local lodge appoint someone whose duty it is to fill out an accident report whenever a member is injured and also make contact with the injured man, or the relatives of a man who is killed, and make it known that legal advice will be given free of charge by the regional counsel. He also makes known the availability of regional counsel to handle the claim and any ensuing litigation.

*** The lodge member who investigates the occurrence and makes contact with the injured man recommends and urges that regional counsel be consulted and employed.

*** The Brotherhood defends its practices on legal grounds, and also argues that they are justified by policy considerations. As a matter of law it argues that its method of handling the personal injury and death claims of its members is permissible because under the Railway Labor Act the Brotherhood is authorized to represent its members before the National Railroad Adjustment Board or other appropriate tribunals, in the processing of "disputes growing out of grievances". (45 U.S.C. 152.) But these injury and death claims are not the kind of labor disputes that the statute contemplates. We find nothing to suggest that Congress intended by the Railroad Labor Act, any more than by the Labor Management Relations Act, (29 U.S.C. 141) to overthrow State regulation of the legal profession and the unauthorized practice of law.

*** The policy argument that the Brotherhood makes, based upon facts that are peculiar to it and to its members, is more persuasive. Railroading is a hazardous business in the course of which many men are injured, and the injuries are frequently very serious. The members of the Brotherhood include switchmen, who perform the most hazardous part of railroad work. In the past the claim agents of some of the railroad have been aggressive in their efforts to settle the claims of injured trainmen for the smallest amounts possible regardless of fairness and adequacy. And while there is evidence that some railroads are moving away from this policy, there is also evidence that undesirable practices persist. The Brotherhood insists that injured trainmen, and the representatives of deceased trainmen, who are unversed in the law, are entitled to procedures that will insure that they receive competent legal advice for reasonable fees. It points out that any advice or service rendered by the

regional counsel relates only to matters arising out of personal injuries incurred during the course of employment.

While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients. Several courts have considered, in varying contexts, the activities of the legal aid bureau and its regional counsel. (Hildebrand v. State Bar of California, 36 Cal. 2d 504, 225 P. 2d 508: Atchison, Topeka & Santa Fe Railway Co. v. Jackson, 235 F. 2d (CC 10) 390; In re O'Neill, 5 F Supp. (D.C.E.D.N.Y.) 465; Doughty v. Grills, 37 Tenn. App. 63, 260 S.W. 2d 379; cf. Ryan v. Pennsylvania Railroad Co. 268 Ill. App. 364). With the exception of the Ryan case, all of them have expressed disapproval. The Ryan case was based primarily on the Appellate Court's appraisal of public policy. *It did, however, approve practices of the Brotherhood which do not differ in substance from those here involved.* (Italics ours)

*** What has been said would ordinarily be sufficient. The Brotherhood, however, has frankly and openly placed its problem and its own solution of it before the court, and asked for guidance. We think, therefore, that it is appropriate to indicate in broad outline what the Brotherhood may do with respect to the injury and death claims of its members.

The objective of the Brotherhood in seeking to secure competent legal representation of its members can be accomplished without lowering the standards of the legal profession. The Brotherhood has a legitimate interest in investigating the circumstances under which one of its

members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of a maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors.***

*** The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully. *Its employees, however, may not carry contracts for the employment of any lawyer, or photostats of settlement checks.* (Italics ours) No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers, or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case. Nor can the Brotherhood fix the fees to be charged for services to its members. The relationship of the attorney to his client must remain an individual and a personal one.

The course thus outlined, if adopted, will make it possible for the Brotherhood to achieve its legitimate objectives without tearing down the standards of the legal profession. If in the future the claims of its injured members are solicited by lawyers, or if the fees charged by lawyers are excessive, the remedy of the Brotherhood will lie by way of complaint to the grievance committee of the

appropriate bar association, rather than by way of a competing system of solicitation.

So far as the disciplinary aspects of the matter are concerned, we are of the opinion that because of the decision of the Appellate Court in Ryan v. Pennsylvania Railroad Co. 268 Ill. App. 364, proceedings looking toward the imposition of discipline should not be pursued. (In re Luster, 12 Ill. 2d 25.) For the same reason we are of the opinion that time should be allowed the Brotherhood to reorganize its legal aid department along the lines outlined in this opinion. The standards here stated will therefore become effective on July 1, 1959.

* * *

NOTE—This unanimous opinion of the Illinois Supreme Court was rendered on May 23, 1958.

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel Virginia State Bar,
Plaintiff,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, NORRIS W. TINGLE and BERNARD M. SAVAGE,
Defendants.

AMENDMENT TO ANSWER OF RESPONDENT, BROTHERHOOD OF RAILROAD TRAINMEN

Amended Answer of Brotherhood of Railroad Trainmen to a Bill of Complaint exhibited against it in the Chancery Court of the City of Richmond, Virginia, by Commonwealth of Virginia, ex rel Virginia State Bar.

The Respondent by way of amendment and supplement to its original Answer in this cause, says that heretofore it filed its answer in this court, and ask that it be taken and read in connection with this, its amended and supplemental answer to the same extent and with the same effect as if the same were herein set forth; for Answer to the Bill of Complaint exhibited against it, the Respondent adds Paragraph (c) to Paragraph 9, beginning immediately after paragraph marked (b), to read as follows:

9(c) The Respondent, Brotherhood of Railroad Trainmen, alleges that it has the legal right to assist any of its injured members by making available to them or their family, the information gathered as a result of its investigation and that in addition it has the right to advise injured members to consult or employ attorneys and doctors for the purpose of protecting their rights, and further alleges that these rights are guaranteed to it by the Virginia Bill of Rights (Virginia Constitution Section 12) and secured by the 1st Amendment to the Constitution of the United States and guaranteed by the 14th Amendment to the Federal Constitution.

WHEREFORE, Respondent, therefore, prays that it may file its amended and supplemental answer and that the bill of complaint exhibited against it be dismissed for the

reason that the issues raised by the bill of complaint are moot and insufficient for want of equity.

BROTHERHOOD OF RAILROAD TRAINMEN

BY: /s/ BEECHER E. STALLARD, P.D.
Beecher E. Stallard
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel Virginia State Bar,
Plaintiff,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, et al,
Defendants.

MOTION TO DISMISS

The Defendant Brotherhood moves the Court to strike the evidence of Plaintiff in this case on the ground that the Plaintiff has not proved that the Brotherhood is engaged in any unlawful practice or is engaged in the unauthorized practice of law in the Commonwealth of Virginia at the present time, nor has the Plaintiff proved that the Brotherhood was engaged in any unlawful practice or in the unauthorized practice of law in the Commonwealth of Virginia at the time of the institution of this case, which was on June 29, 1959.

GROUND FOR SAID MOTION

1. The evidence shows that prior to April, 1959, the Defendant Brotherhood eliminated practices which Plaintiff alleged it was engaged in in the Commonwealth of Virginia, and which Plaintiff alleged constituted the unauthorized practice of law.

2. The practices in which the Defendant Brotherhood is now engaged in the Commonwealth of Virginia do not constitute the practice of law and Defendant has the legal right to make available to its members or their families, any information gathered as a result of its investigation, and in addition it has the right, and members of local lodges affiliated with it, has the right to inform members to consult or employ attorneys and doctors for the purpose of protecting their rights, and states that these rights are guaranteed to it and to members of local lodges by the Virginia Bill of Rights (Virginia Constitution §12) and secured by the 1st Amendment to the Constitution of the United States and guaranteed by the 14th Amendment to the Federal Constitution.

3. The evidence does not prove that the Defendant Brotherhood is now or has ever been guilty of the practice of law in the Commonwealth of Virginia, under the rules defining the practice of law.

4. An injunction is a preventative remedy and where the evidence shows that the Defendant Brotherhood has ceased committing the acts complained of, an injunction should be refused. (See Barton's Chan. Prac. 3d, page 603, Akers v. Mathieson, 151 Va. 1, Kwass v. Kersey, 139 W.Va. 497, commented on in 57 W.Va. Law Rev. 101.)

VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

THE 23rd DAY OF JANUARY, 1962

COMMONWEALTH OF VIRGINIA, ex rel Virginia State Bar,
Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, BERNARD M. SAVAGE and NORRIS W. TINGLE,
Defendants.

ORDER

This day came again the complainant and the defendant, Brotherhood of Railroad Trainmen, by counsel, and the said defendant presented its separate written motions (1) to strike exhibits filed with the testimony of William P. Kennedy, (2) to strike the testimony of Dewey C. McLaughlin, (3) to strike the testimony of Clifford D. Olsen and Bette Olson, (4) to strike the testimony of Paul A. Hodges, (5) to strike the testimony of Charles William Clarke, Jr., (6) to strike the testimony of Kenneth H. Gibson, (7) to strike the testimony of Elmo S. Loman and Gloria M. Loman (8) to strike the testimony of Lawrence Edward Troxtell and Virginia Lee Troxtell, and (9) *to strike all the evidence of the complainant and dismiss its suit, which said motions are hereby ORDERED filed in this cause and were argued by counsel. On consideration whereof, each of said motions is overruled and denied to which action of the Court the said defendant excepted.* (Emphasis supplied)

Thereupon, the said defendant further moved the Court for leave to file in evidence in this cause photocopies of two certain letters, one dated April 3, 1961, from Douglas W. Matthews to The Solicitor of the City Court of Cedartown, Cedartown, Georgia, and the other dated October 12, 1961, from T. J. Lewis, Jr. to Mr. W. E. B. Chase, c/o Mr. Beecher Stallard, Central National Bank Building, Richmond, Virginia, and to strike from the evidence in this cause the testimony heretofore given by Mrs. Betty Ann Queen Doeg on October 10, 1961, to which the complainant objected on the grounds that the letters were not subject to cross-examination and that if admitted the complainant would be obliged to move the Court for leave to bring before the Court in person or by deposition the individuals referred to in said letters and such others as may be required to show to the Court that the matters therein set forth are not truly and correctly stated. Upon consideration whereof the motions to file the said letters and to strike the evidence of Mrs. Doeg are overruled and denied, to which the said defendant excepted.